



Federal Communications Commission
Washington, D.C. 20554

APR 9 1998

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APR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Connie Mack
United States Senator
1342 Colonial Boulevard
Suite 27
Fort Myers, FL 33907

Dear Senator Mack:

Thank you for your inquiry on behalf of your constituent, Robert L. Anderson, Sarasota, Florida, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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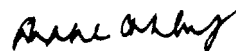
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At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten
Acting Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: CWD

Dockets (2)

John Conwell

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CONNIE MACK
FLORIDA

United States Senate

WASHINGTON, DC 20510-0904

November 10, 1997

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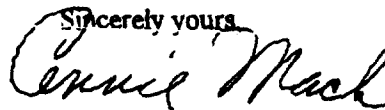
Reed Hundt, Chairman
Federal Communications Commission
Congressional Liaison Office
1919 M Street N.W.
Washington, D.C. 20554

Dear Mr. Hundt:

Enclosed please find correspondence from Mr. Robert L. Anderson, Chairman.

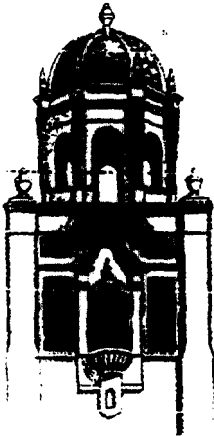
I would appreciate your advising me of your action in this matter and returning the letter with your reply. Please respond to my Regional Aide, Ann Burhans at my Fort Myers Regional Office, located at 1342 Colonial Blvd, Suite 27, Fort Myers, Florida 33907, (941) 275-6252.

Thank you for your prompt attention.

Sincerely yours


Connie Mack
United States Senator

CM/alb
Enclosure



**SARASOTA COUNTY GOVERNMENT
SARASOTA, FLORIDA**

FORT MYERS

NOV 07 1997

Board of County Commissioners

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David R. Mills - District 2
Shannon Staub - District 3
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**P.O. Box 8
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November 3, 1997

**Senator Connie Mack
1342 Colonial Blvd.
Suite 27
Ft. Myers, FL 33907**

Dear Senator Mack:

The issue of regulating cellular, radio and TV towers is presently being addressed here at the local level as we strive to balance the needs of the telecommunications industry and the public health, safety and welfare of the citizens of Sarasota County. We have been working with industry representatives and neighboring jurisdictions to ensure that local regulations are responsive to and consistent with the Telecommunications Act of 1996.

Sarasota County has been advised, however, that the Federal Communications Commission (FCC) may be attempting to go beyond the Telecommunications Act by pre-empting local zoning of cellular, radio and TV towers and making the FCC the "Federal Zoning Commission" for all telephone and broadcast towers. Sarasota County Government is strongly opposed to any actions that would undermine our fundamental right to exercise our local land use decision making authority. Of particular concern are the FCC's actions in three different rule makings:

Cellular Towers - Moratoria: Sarasota County Government has imposed a four month moratorium on the construction, modification and location of cellular towers in order to adopt regulations which will balance the interests of the telecommunication providers and the citizens of Sarasota County. To that end, the County has been working along side industry representatives to create reasonable regulations. The FCC is proposing a rule banning moratoria that local governments impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. This expressly violates the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

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Radio/TV Towers: The FCC's proposed rule on radio and TV towers is also of great concern. It sets an arbitrary limit of 21 to 45 days for local governments to act on any local permit (environmental, building permit, zoning or other). This time limit is not only arbitrary it is inconsistent with the equal treatment of other types of land uses and is counter to established public input processes, which in Sarasota County involves both the Planning Commission and the Board of County Commissioners. Under the FCC's proposal, any permit request is automatically deemed granted if the local government does not act in this timeframe, even if the application is incomplete or clearly violates local law. In addition, the FCC's proposed rule would prevent local governments from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC. Furthermore, all appeals of zoning and permit denials would go to the FCC, not to local courts. This proposed rule expressly undermines the well-established zoning authority of local governments.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that local governments cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. According to the FCC, this taint could arise if a member of the public even mentions radiation at a public hearing. In fact, the FCC is saying it can "second guess" what the true reasons for a local government's decision are, need not be bound by the stated reasons given by a local government and do not even need to wait until a local planning decision is final before the FCC acts.

In spite of the County's admonishment to its citizens that it is not permitted to consider radiation concerns in its decisions regarding cellular towers, some of our citizens are concerned about the issue of radiation from cellular towers. We cannot deny citizens their right of free speech in mentioning their concerns at public hearings. In its rule making, the FCC is saying that if any citizen raises this issue, that is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the local government expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

These proposed actions represent an attempt to seize local government land use authority and violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, knowledge of local conditions or accountability to local residents.

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